



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/902,348	07/10/2001	Luis M. Ortiz	O&L 1000-1058	8886
64064	7590	01/30/2009		
ORTIZ & LOPEZ, PLLC				
P.O. BOX 4484				
ALBUQUERQUE, NM 87196-4484				
EXAMINER				
DIEP, NHON THANH				
ART UNIT		PAPER NUMBER		
2621				
MAIL DATE		DELIVERY MODE		
01/30/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LUIS M. ORTIZ and KERMIT D. LOPEZ

Appeal 2008-2833
Application 09/902,348¹
Technology Center 2600

Decided:² January 30, 2009

Before KENNETH W. HAIRSTON, JOSEPH F. RUGGIERO,
and KEVIN F. TURNER, *Administrative Patent Judges*.

HAIRSTON, *Administrative Patent Judge*.

¹ Application filed July 10, 2001, claiming benefit of priority from provisional application 60/243,561 filed October 26, 2000. The real parties in interest are Luis M. Ortiz and Kermit D. Lopez.

² The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1 to 56. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

The Invention

Appellants' invention is directed to a system and method for providing venue-based data to hand held devices such as PDAs, wireless telephones, or other hand held video-enabled devices (Figs. 4-9; Spec. 1, 3, 5, and 6). The venue-based data can be video data captured by one or more video cameras located in the venue to provide one or more perspective views of a venue event (*see* claims 1 and 21).

Claim 1, reproduced below, is representative of the subject matter on appeal:

1. A method for providing venue-based data to hand held devices, said method comprising the steps of:

capturing video images from more than one perspective of a venue-based activity using more than one video camera; and

processing said video images into venue-based data formatted for wireless transmission via a wireless network for use by more than one hand held device each having a display screen adapted for simultaneously viewing more than one perspective of venue-based data captured by more than one video camera.

The Rejections

The Examiner relies upon the following as evidence of unpatentability:

McClintock	US 5,598,208	Jan. 28, 1997
Jain	US 5,729,471	Mar. 17, 1998

Ausems	US 6,434,403 B1	Aug. 13, 2002 (filed Feb. 19, 1999)
Treyz	US 6,526,335 B1	Feb. 25, 2003 (filed Jan. 24, 2000)
Anderson	US 6,578,203 B1	Jun. 10, 2003 (filed May 28, 1999)
Hendricks	US 6,675,386 B1	Jan. 6, 2004 (filed Sep. 4, 1997)
Blanchard	US 6,782,102 B2	Aug. 24, 2004 (filed Dec. 21, 2000) ³

The following six rejections are before us for review:

(i) The Examiner rejected claims 1 to 4, 6 to 10, 12, 13, 15, 18 to 23, 26, 27, 31, 32, 35, 37, 39, and 56 under 35 U.S.C. § 103(a) as being unpatentable over Anderson and Jain.

(ii) The Examiner rejected claims 5, 14, 16, 17, 24, 33, and 34 under 35 U.S.C. § 103(a) as being unpatentable over Anderson and Jain, further in view of Hendricks.

(iii) The Examiner rejected claim 25 under 35 U.S.C. § 103(a) as being unpatentable over Anderson and Jain, further in view of McClintock.

³ We note that although Appellants' claimed priority date of October 26, 2000, is prior to Blanchard's filing date of December 21, 2000, Appellants have not asserted that Blanchard is *not* prior art, and the Examiner has not made a determination as to whether the instant application is entitled to the benefit of the October 26, 2000, filing date of provisional application 60/243,561. *See* MPEP 201.11.

(iv) The Examiner rejected claims 11, 28 to 30, 36, 38, 41, and 42 under 35 U.S.C. § 103(a) as being unpatentable over Anderson and Jain, further in view of Blanchard.

(v) The Examiner rejected claims 40, 43, and 45 to 54 under 35 U.S.C. § 103(a) as being unpatentable over Anderson and Jain, further in view of Ausems.

(vi) The Examiner rejected claims 44 and 55 under 35 U.S.C. § 103(a) as being unpatentable over Anderson and Jain, further in view of Treyz.

Rather than repeat the arguments of Appellants or the Examiner, we refer to the Brief⁴ and the Answer⁵ for their respective details. In this decision, we have considered only those arguments actually made by Appellants. Arguments which Appellants could have made but did not make in the Briefs have not been considered and are deemed to be waived. See 37 C.F.R. § 41.37(c)(1)(vii). Notably, Appellants present no arguments with respect to rejections (ii), (iii), and (vi) listed above.

FINDINGS OF FACT

Findings of fact throughout this decision are supported by a preponderance of the evidence of record. The relevant facts include the following:

Appellants' Disclosure

1. Appellants' invention relates to a system and method of providing venue-based data to hand held devices (Figs. 4-9; Spec. 1, 3, 5, and 6). As

⁴ We refer to the Appeal Brief filed March 2, 2006, throughout this opinion.

⁵ We refer to the Examiner's Answer mailed May 16, 2006, throughout this opinion.

indicated *supra*, Appellants describe and claim a method for providing formatted venue-based data for wireless transmission over a wireless network for use by more than one hand held device each having a display screen for simultaneously viewing more than one perspective captured by more than one video camera (Fig. 4, 5, 7-9; claim 1).

2. Appellants describe “hand held devices” as including “wireless electronic hand held devices, such as Personal Digital Assistants (PDAs), hand held televisions, and data-enabled wireless telephones” (Spec. 1:16-18), as well as “data/video-enabled cellular telephones, and other hand held wireless video-enabled devices” (Spec. 3:13-14).

Anderson

3. Anderson teaches a system and method for providing venue-based data (*i.e.*, video images of multiple perspectives of an activity in the venue from more than one video camera) including processing the video images for wireless transmission to more than one *hand held device* (Fig. 3; Abs.; col. 2, ll. 15-17; col. 2, l. 66 to col. 3, l. 6; col. 5, ll. 22-37; col. 6, ll. 9-13).
4. Anderson’s *hand held* device(s) can be either head mounted displays (Fig. 4), or can be any other *portable* devices (col. 5, ll. 22-37; col. 6, ll. 7-13). Anderson discloses that although using a head mounted display is the preferred embodiment, this is merely a possible example of implementation to set forth a clear understanding of the principles of the invention, and the invention is not limited thereto (col. 7, ll. 4-11). Anderson broadly sets forth claims drawn to a “portable receiver and portable display” that are not

limited to a head mounted display (independent claims 1, 4, 7, and 11), and discloses that the portable receiver/display can be hand held (*i.e.*, carried) (*see* claim 6 at col. 7, ll. 61-62, “wherein a spectator carries said portable receiver and portable display”).

Jain

5. Jain teaches a system and method for providing a display for simultaneous viewing of more than one perspective of a venue-based event captured by more than one video camera (Figs. 17-21; col. 33, ll. 30-34 and 61-67).
6. Jain’s display is not hand held, but is physically wired to a computer workstation (*see* Figs. 1, 3, 11b, and 15).

Blanchard

7. Blanchard teaches hand held communication devices which use encryption (col. 1, ll. 11-13). Blanchard discloses that the use of encryption algorithms for security of information is well known (col. 2, ll. 9-21). Blanchard also discloses “[i]n many instances, it is desirable to provide secure or encrypted communications to prevent interception of the information by outside parties” (col. 1, ll. 14-17).

Ausems

8. Ausems teaches a wireless telephone and PDA 100 (*i.e.*, hand held device), having a smart card module 160 (Figs. 1; Abs.; col. 1, ll. 12-30 and 54-60; col. 4, ll. 40-50).

ISSUES

First Issue: Anderson and Jain

The Examiner rejected all claims 1 to 56 using the basic combination of Anderson and Jain (*see* rejections (i) – (vi) discussed *supra*).

Appellants primarily argue in the Brief that Anderson does not teach or suggest a *hand held device*, but instead teaches a head mounted display (HMD) (Br. 10-12, 15, 18-19). Appellants also argue that as a result, the combination of Anderson and Jain fails to teach or suggest a *hand held device* (Br. 15, 18-19).

The Examiner contends that Anderson's HMD is a *preferred* embodiment and that Anderson also teaches *alternate* embodiments (*see* col. 5, ll. 33-37; col. 6, ll. 9-13) including a *portable* display device which meets the broadly recited limitation, *hand held device* (Ans. 4-9; Final Rej. 2-3).

Thus, the first and most significant issue is: Have the Appellants demonstrated that the Examiner erred in determining that Anderson teaches or suggests a *hand held device*?

Second Issue: Anderson, Jain, and Blanchard

The Examiner added Blanchard for a teaching of a data *encryption* process to provide security of transmitted information (Ans. 9-11; Final Rej. 5-6). The Examiner points out that Blanchard discloses encryption for securing communications is well known (Ans. 11).

Appellants assert that Anderson, Jain, and Blanchard, taken individually or in combination, do not teach or suggest the features of claim 41 of processing

using encryption, broadcasting wirelessly to hand held devices, and transmitting encrypted video signals (Br. 20-22).

Thus, the second issue is: Have the Appellants demonstrated that the Examiner erred in determining that the combination of Anderson, Jain, and Blanchard teaches or suggests a system as recited in claim 41 including a processor and transmitter for *encryption* encoding of video images?

Third Issue: Anderson, Jain, and Ausems

The Examiner added Ausems for a teaching of a wireless telephone and a wireless PDA having a smart card (Ans. 11-13; Final Rej. 6-7).

Appellants argue that Anderson's HMD teaches away from Ausems' hand held device, there is no motivation to combine these two references, and that therefore the combination of Anderson, Jain, and Ausems fails to teach or suggest a hand held device that receives, processes, and transmits video perspectives as recited in claims 45 and 50 (Br. 22-24).

Thus, the third issue is: Have the Appellants demonstrated that the Examiner erred in determining that Anderson, Jain, and Ausems are (i) properly combinable and (ii) teach or suggest a hand held device for receiving, processing, and transmitting video perspectives as recited in claims 45 to 54?

PRINCIPLES OF LAW

"During examination, 'claims ... are to be given their broadest reasonable interpretation consistent with the specification, and ... claim language should be read in light of the specification as it would be interpreted by one of ordinary skill

in the art.” *In re Am. Acad. of Sci. Tech. Cir.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004); *In re Morris*, 127 F.3d 1048, 1053-54 (Fed. Cir. 1997).

The test for obviousness is what the combined teachings of the references would have suggested to the artisan. Accordingly, one can not show nonobviousness by attacking references individually where the rejection is based on a combination of references. *In re Keller*, 642 F.2d 413, 426 (CCPA 1981).

Appellants have the burden on appeal to the Board to demonstrate error in the Examiner’s position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006).

ANALYSIS

The Examiner rejected claims 1 to 40, 55, and 56 over Anderson and Jain, claims 41 to 44 over Anderson and Jain combined with Blanchard, and claims 45 to 54 over Anderson and Jain combined with Ausems.

Appellants do not dispute the individual teachings of Anderson, Jain, Blanchard, or Ausems other than contesting Anderson’s disclosure of a hand held device. Appellants’ arguments that Anderson only allows one perspective view (Br. 15), and that Jain is a wired device and not a hand held wireless device (Br. 15 and 18) are unpersuasive. Anderson teaches a hand held wireless device (Finding of Fact 4), Jain teaches multiple perspective views (Finding of Fact 5), and the rejection is based on a combination of these references. *See Keller*, 642 F.2d at 426. Because one of ordinary skill in the art would have been motivated to improve Anderson’s hand held device and video processor/display with Jain’s simultaneous viewing and editing features (Ans. 6-9), we are not persuaded by Appellants that Jain’s wired device teaches away from Anderson’s HMD device

(see Br. 18-19). Appellants' remaining arguments are not persuasive for reasons that follow *infra*.

We agree with the Examiner's findings of fact and conclusions of obviousness with respect to claims 1 to 56 (Ans. 4-13; Final Rej. 2-8), and adopt them as our own, along with some amplification of the Examiner's explanation of the teachings of Anderson (see Findings of Fact 3 and 4) and Jain (see Finding of Fact 5).

The first issue before us relates to Anderson (pertaining to all claims 1 to 56), the second issue concerns Blanchard (pertaining only to claims 41 to 44), and the third issue relates to the motivation to combine Ausems with Anderson and Jain (pertaining only to claims 45 to 54). We will discuss the three issues before us in turn below.

First Issue: Did the Examiner err in determining that Anderson teaches or suggests a hand held device?

Each and every independent claim recites the term(s) "hand held device" and/or "hand held devices" (see independent claims 1, 18, 19, 20, 21, 35, 37, 41, 45, and 50).

Anderson both teaches and strongly suggests the use of hand held devices (Finding of Fact 4). Specifically, Anderson teaches a wireless and portable version of the display and receiver, and also teaches at least in claim 6 that the portable receiver/display can be carried (*i.e.*, hand held) (see Finding of Fact 4). In addition, because any head mounted display would have to be placed on the head

using the hands, Anderson's head mounted display broadly suggests a hand held device.

We agree with the Examiner that Anderson's teaching of a portable wireless device meets the broadly recited term *hand held device* (Ans. 4-5), especially to the extent these limitations are broadly set forth in the claims and Specification (*see* independent claims 1, 18, 19, 20, 21, 35, 37, 41, 45, and 50; Finding of Fact 2).

Because "claims ... are to be given their broadest reasonable interpretation consistent with the specification, and ... claim language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art" (*Am. Acad. of Sci. Tech. Cir.*, 367 F.3d at 1364; *Morris*, 127 F.3d at 1053-54), one of ordinary skill in the art would interpret the phrase *hand held device* in light of the Specification. Appellants provide a definition for the term *hand held devices* in the Specification as including "wireless electronic hand held devices, such as Personal Digital Assistants (PDAs), hand held televisions, and data-enabled wireless telephones," as well as "data/video-enabled cellular telephones, and other hand held wireless video-enabled devices" (Finding of Fact 2).

Inasmuch as Appellants have defined *hand held devices* in the Specification, and inasmuch as "claims ... are to be given their broadest reasonable interpretation consistent with the specification" (*Am. Acad. of Sci. Tech. Cir.*, 367 F.3d at 1364; *Morris*, 127 F.3d at 1053-54), we conclude that Anderson teaches and suggests a *hand held device*.

In view of the foregoing, Appellants have not shown that the Examiner erred in determining that Anderson teaches or suggests a hand held device.

Second Issue: Did the Examiner err in determining that the combination of Anderson, Jain, and Blanchard teaches or suggests a system as recited in claims 41 to 44 including a processor and transmitter for encryption encoding of video images?

Claim 41 recites “a processor for processing said video images with encryption coding” and “at least one transmitter for transmitting encrypted video signals” (claim 41). Claims 42 to 44 depend from claim 41 and therefore include the same limitations.

We agree with the Examiner that Blanchard teaches it is well known in the field of hand held devices to process and transmit signals using encryption for security purposes (Finding of Fact 7). We also agree with the Examiner that it would have been obvious to modify Anderson and Jain with Blanchard’s encryption teachings (Ans. 9-11; Final Rej. 5-6). Appellants’ arguments throughout the Brief do not convince us of any error in the Examiner’s positions in the rejection. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

In view of the foregoing, Appellants have not shown that the Examiner erred in determining that the combination of Anderson, Jain, and Blanchard teaches or suggests a processor and transmitter for encryption encoding of video images, as recited in claims independent claim 41 and claims 42 to 44 which depend therefrom.

Third Issue: Did the Examiner err in determining that Anderson, Jain, and Ausems are (i) properly combinable and (ii) teach or suggest a hand held device for receiving, processing, and transmitting video perspectives as recited in claims 45 to 54?

Independent claims 45 and 50 each recite a system having “a data processing system adapted for receiving, processing and transmitting video perspectives received from more than one camera for simultaneous display at a single display integrated with at least one wireless *personal digital assistant*” (claim 45) (emphasis added) or “... integrated with said at least one wireless *telephone*” (claim 50) (emphasis added).

Appellants contend that Ausems’ wireless PDA/telephone combination device teaches away from Anderson’s HMD, there is no motivation to combine these two references, and therefore the combination of Anderson, Jain, and Ausems fails to teach or suggest a hand held device that receives, processes, and transmits video perspectives as recited in claims 45 and 50 (Br. 22-24).

As discussed above with respect to the first issue, Anderson is in fact drawn to portable wireless or held hand devices (see Finding of Fact 4). Accordingly, we are not persuaded by Appellants’ argument that Ausems (which is also drawn to wireless hand held devices) teaches away since both Anderson and Ausems concern hand held devices and are therefore analogous art.

In view of the foregoing, Appellants have not shown that the Examiner erred in determining that Anderson, Jain, and Ausems are properly combinable and teach or suggest all of the limitations of claims 45 to 54.

Summary

Appellants' arguments have not persuaded us of error in the Examiner's rejections of claims 1 to 56 under 35 U.S.C. § 103(a) as being unpatentable over various combinations of references, all using Anderson and Jain as base references. In our view, Anderson and Jain teach or suggest all of the limitations recited in Appellants' independent claims 1, 18, 19, 20, 21, 35, and 37, including the use of *hand held devices*. In addition, Anderson and Jain modified by Blanchard and Ausems teach or suggest all of the limitations recited in Appellants' independent claims 41, and 45 and 50, respectively. Appellants present no arguments with respect to rejections (ii), (iii), and (vi) as discussed earlier, and we find no error in these rejections which are also based on the basic combination of Anderson and Jain. Appellants present no separate arguments with respect to dependent claims 2 to 17, 22 to 34, 36, 38 to 40, 42 to 44, 46 to 49, and 51 to 56, and instead rely on the arguments presented with respect to the independent claims already addressed above (*see* Br. 25). For all of the above reasons, we sustain each of the Examiner's rejections ((i)-(vi) listed *supra*).

CONCLUSIONS OF LAW

Appellants have not shown that the Examiner erred in determining that Anderson teaches or suggests a *hand held device*.

Appellants have not shown that the Examiner erred in determining that the combination of Anderson, Jain, and Blanchard teaches or suggests a system as recited in claims 41 to 44 including a processor and transmitter for encryption encoding of video images.

Appeal 2008-2833
Application 09/902,348

Appellants have not shown that the Examiner erred in determining that Anderson, Jain, and Ausems are (i) properly combinable and (ii) teach or suggest a hand held device for receiving, processing, and transmitting video perspectives as recited in claims 45 to 54.

ORDER

The decision of the Examiner to reject claims 1 to 56 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

KIS

KERMIT D. LOPEZ/LUIS M. ORTIZ
ORTIZ & LOPEZ PLLC
P. O. BOX 4484
ALBUQUERQUE, NM 87196-4484